Supreme Court, U. S.
FILED
AUG 29 1978
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-170

BOARD OF EDUCATION, BRATENAHL, OHIO, LOCAL SCHOOL DISTRICT,

Petitioner,

vs.

STATE BOARD OF EDUCATION OF OHIO, DEPARTMENT OF EDUCATION OF OHIO, FRANKLIN B. WALTER, Superintendent of Public Instruction and Secretary, State Board of Education,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-170

BOARD OF EDUCATION, BRATENAHL, OHIO,
LOCAL SCHOOL DISTRICT,

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STATE BOARD OF EDUCATION OF OHIO,
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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. QUESTIONS PRESENTED

(A) Did the Supreme Court of Ohio properly determine that the mere refusal by the State Board of Education of Ohio in 1970 to modify an agreed upon and unappealed 1968 order dissolving and merging a local school district did not constitute an "adjudication" and was not appealable under the provisions of the Ohio Administrative Procedure Act, *Ohio Revised Code* 119, *et seq*?

(B) Did the Supreme Court of Ohio properly determine that notwithstanding its denial of certiorari to review

a judgment of a Court of Appeals in 1971, it may nevertheless consider questions raised in that first appeal, as well as on subsequent appeals from the Court of Appeals, when the Supreme Court of Ohio subsequently did grant certiorari in this case?

II. STATEMENT OF CASE

This case involves the application of an Ohio statute, *Revised Code* 3311.29, which required all school districts in Ohio to have twelve grades of school, effective July 1, 1968 (Petitioner's A 4). The Village of Bratenahl did not have the requisite twelve (12) grades on July 1, 1968, but in an effort to delay the required statutory joinder with the adjacent Cleveland City School District, it requested that the Ohio State Board of Education postpone the joinder for two years until July 1, 1970 (Pet. A 2). To accomplish this delay, *the Bratenahl Board of Education* on June 8, 1968, passed a resolution which stated, *inter alia*:

> "Be it further resolved that this Board recognizes that, effective July 1, 1970, the Bratenahl Local School District will cease to exist and its territory will be joined with and made a part of the Cleveland City School District."
>
> (Pet. A 4)

The State Board of Education granted the Bratenahl Board's request to postpone the merger and on June 10, 1968, ordered the Bratenahl Local School District dissolved and joined with the Cleveland City School District, effective July 1, 1970 (Pet. A 9). *No appeal was taken from this resolution* (Pet. A 113). In addition to its agreement that it would merge with the Cleveland City School District on July 1, 1970, the Bratenahl Board also agreed that during the two year period before dissolution, the Bratenahl Board

would institute a program to bring some black students into its school system (Pet. A 3). The Bratenahl Board did this by importing selected black students from one elementary school in the Cleveland City School District. Of primary importance, however, is the undisputed fact that the Bratenahl Board and the Ohio State Board of Education, *agreed* in 1968 that the Bratenahl Local School District would be dissolved on July 1, 1970, and would be joined with the surrounding Cleveland City School District on that date.

On July 1, 1970 — the agreed upon dissolution date — the Bratenahl Local School District still did not have twelve (12) grades of school, but instead of dissolving pursuant to the agreed order and resolution, the Bratenahl Board asked the State Board of Education to change its 1968 order so as to further postpone the dissolution and merger (Pet. A 11). Upon refusal of the Ohio State Board of Education to change its 1968 order, Bratenahl then commenced actions designed to avoid compliance with the 1968 order of the State Board of Education. First, it appealed from the mere refusal of the Ohio State Board to change the agreed upon order of 1968 (Pet. A 16); and second, it started a high school in an abandoned Nike missile base — a high school which never met even the legal minimum standards for a high school in the State of Ohio (Pet. A 108).

It was this refusal of the State Board of Education to change the agreed upon 1968 order which started, in 1970, the dispute between the parties. Every proceeding between these parties since that time has had its origin in the State Board of Education's refusal to change its preexisting order of 1968.

On September 22, 1971, the Supreme Court of Ohio overruled the State Board of Education's motion for cer-

tiorari from the judgment of the Court of Appeals, which judgment had held that the 1970 order of the State Board of Education refusing to modify its 1968 order was an "adjudication" and appealable pursuant to the provisions of the Ohio Administrative Procedure Act, *Ohio Revised Code* 119, *et seq.* (Pet. A 31). Litigation between the parties then continued until finally, in 1977, the Ohio Supreme Court heard, for the first time on the merits, this protracted dispute between the parties (Pet. A 110). Before the Ohio Supreme Court by that time were three cases between the instant parties which had been adjudged by the Court of Appeals, consisting of an administrative appeal case and two consolidated mandamus cases brought by the Bratenahl Board (Pet. A 113). The opinion of the Ohio Supreme Court on March 22, 1978, disposed of all the cases on the basic issue formerly presented to the Court in the State Board of Education's motion for certiorari in 1971 (Pet. A 114). The decision of the Ohio Supreme Court correctly held that the mere refusal of a state agency to change an agreed upon order, two years after the order was issued, is not an adjudication under the Ohio Administrative Procedure Act, *Ohio Revised Code* 119, *et seq.*, and thus, it is not an appealable action under the Ohio Act (Pet. A 111).

Since the denial of a rehearing on this matter by the Ohio Supreme Court on May 5, 1978 (Pet. A 150) and the denials by Mr. Justice Stewart and the United States Supreme Court of a stay of the judgment of the Ohio Supreme Court on June 19, 1978, and June 26, 1978, respectively (Respondents' A 1a, 2a), two new actions involving the instant parties have been initiated.

The first new action, filed June 28, 1978, by the Bratenahl Board in the Ohio Court of Appeals involves a complaint in prohibition and mandamus against the instant Respondents seeking *inter alia* a writ to prohibit the dissolution of the Bratenahl Local School District (Resp. A 4a). The complaint sets forth the change in the Ohio statute, *Revised Code* 3311.29, as the basis for the issuance of the writs. This same issue of the change in the Ohio statute is presented in this instant Petition for Writ of Certiorari (pp. 9, 10, 21, 22). This new action was dismissed *sua sponte* by the Ohio Court of Appeals and is presently pending on appeal to the Ohio Supreme Court (Resp. A 10a).

The second new action involves a taxpayer class action against the instant parties for an injunction preventing the enforcement of the State Board order merging the Bratenahl Local School District into the Cleveland City School District on the basis that *Ohio Revised Code* 3311.29 is unconstitutional. This action was filed on August 2, 1978, in the Common Pleas Court of Cuyahoga County, Ohio (Resp. A 12a).

III. REASONS FOR DENYING THE WRIT OF CERTIORARI

The decision of the Supreme Court of Ohio should not be reviewed because:

(A) The question of whether a mere refusal of a state agency to modify an order to dissolve and merge a school district (agreed to and unappealed by the local school district) is an "adjudication" under the Ohio Administrative Procedure Act, *Revised Code* 119, *et seq.*, involves purely local, nonfederal issues under Ohio statutes.

(B) The decision of the Ohio Supreme Court is entirely consistent with the substantive law of Ohio and with the decisions of the Supreme Court of the United States concerning issues presented in a former motion to certify which was denied but which issues were later considered in a

subsequent appeal involving the same dispute between the parties.

Therefore, there is an obvious absence of any special and important reasons for this Court to review the case, and Petitioner's request for a Writ of Certiorari should be denied.

(A) The question of whether a mere refusal of a state agency to modify an order to merge two school districts (agreed to and unappealed by the local school district) is an "adjudication" under the Ohio Administrative Procedure Act, Revised Code 119, et seq., involves purely local, nonfederal issues under Ohio statutes.

Petitioner's argument that it was denied due process because the 1970 administrative order of the State Board of Education was issued without notice and a hearing completely ignores the fact that the 1970 administrative order was merely a refusal to modify the earlier 1968 administrative order of dissolution and merger of the Bratenahl Local School District, effective July 1, 1970 (Pet. A 15). Petitioner also ignores the fact that it had *agreed* in its own written resolution to the 1968 dissolution and merger order (Pet. A 4) and that *it did not appeal* the 1968 dissolution and merger order (Pet. A 113). These fundamental, undisputed facts clearly demonstrate that no issue of due process is involved in this case.

As the Ohio Supreme Court observed:

> "Clearly the act of refusing to change one's position is not equivalent to the act of deciding in the first instance which position to take among several alternatives. The 'rights,' 'privileges,' and 'benefits' of the Bratenahl Local School District to remain in existence after July 1, 1968, were determined by the state board in its resolution dated June 10, 1968, and were not in some way resurrected or placed back into issue upon the subsequent request of appellee [Petitioner] in 1970 for an additional exception."
>
> (Pet. A 116)

Thus, Petitioner's belated claim of a denial of due process concerning a state agency's refusal to modify an order issued two years previously, unappealed and agreed to by the Petitioner, is obviously without merit.

This Court has repeatedly held that it is without jurisdiction to review a decision of a state court unless it appears affirmatively from the record, not only that a federal question was presented but that the decision of the federal question was necessary to the determination of the cause. *Southwestern Bell Telephone Co.* v. *State of Oklahoma*, 303 U.S. 206, 212 (1937). There is absolutely no federal question presented by this case.

(B) The decision of the Ohio Supreme Court is entirely consistent with the substantive law of Ohio and with the decisions of the Supreme Court of the United States concerning issues presented in a former motion to certify which was denied but which were later considered in a subsequent appeal involving the same dispute between the parties.

Petitioner also asserts that it was denied due process because the Ohio Supreme Court allegedly disregarded prior lower court judgments between the same parties on the same issue, *i.e.*, the appealability of the 1970 action by the State Board of Education. This same issue, however, was presented to the Ohio Supreme Court in a motion for certiorari in 1971 which the Ohio Supreme Court overruled

at that time (Pet. A 31). The Ohio Supreme Court correctly noted in its subsequent opinion of March 22, 1978, that where an issue is decided by a Court of Appeals in a prior decision in which the Ohio Supreme Court denied certification of the record, the Ohio Supreme Court is not precluded from subsequently reviewing that issue and cited *Pengelly* v. *Thomas,* 151 Ohio St. 51 (1949), in support of this proposition (Pet. A 114).

The Ohio Supreme Court's subsequent review of an issue presented in a former motion for certiorari is in accord with the decisions and practice of the Supreme Court of the United States:

> *Hughes Tool Company* v. *Trans World Airlines,* 409 U.S. 363, 365 (1973);
>
> *Mercer* v. *Theriot,* 377 U.S. 152, 153-54 (1964);
>
> *Chase National Bank* v. *Citizens Gas Company,* 314 U.S. 63 (1941).

Not all of the actions commenced by Petitioner are set forth in its Appendix, inasmuch as Petitioner had also filed two separate actions in mandamus which were also disposed of by the Ohio Supreme Court's decision on March 22, 1978 (Pet. A 113-114), as well as the most recent action in mandamus and prohibition pending on appeal in the Ohio Supreme Court (Resp. A 4a). Each and every proceeding has had its origin in the State Board of Education's refusal to modify its order of 1968. The Ohio Supreme Court heard for the first time on the merits the dispute between the parties and rendered its decision on March 22, 1978. Under the principles established by both this Court and the Ohio Supreme Court, the Ohio Supreme Court properly considered issues which were presented in a former motion for certiorari.

IV. CONCLUSION

The decision of the Ohio Supreme Court is a well reasoned opinion involving purely local, nonfederal issues under state statutes. It is respectfully submitted that this case contains no special and important issues which would make it appropriate for review and consideration by this Court and that therefore, the Writ of Certiorari should be denied.

Respectfully submitted,

JOHN D. HOLSCHUH

ALEXANDER, EBINGER, HOLSCHUH, FISHER & McALISTER

17 South High Street
Columbus, Ohio 43215
(614) 221-6345

Counsel for Respondents

APPENDIX A

[PETITIONER'S APPLICATION FOR STAY OF JUDGMENT OF SUPREME COURT OF OHIO, DENIED BY MR. JUSTICE STEWART]

(Filed June 19, 1978)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

June 20, 1978

Thomas V. Koykka, Esquire
Arter & Hadden
1144 Union Commerce Bldg.
Cleveland, Ohio 44115

Re: *Board of Education, Bratenahl Local School District* v. *State Board of Education of Ohio, et al., A-1066*

Dear Mr. Koykka:

Your application for stay in the above-entitled case has been presented to Mr. Justice Stewart, who has endorsed thereon the following:

"Application denied
June 19, 1978
Potter Stewart"

Very truly yours,

MICHAEL RODAK, JR., Clerk
By
Laurence P. Gill
Deputy Clerk

th

cc: John D. Holschuh, Esquire
Alexander, Ebinger, Holschuh, Fisher & McAlister
17 South High Street
Columbus, Ohio 43215

APPENDIX B

[PETITIONER'S APPLICATION FOR STAY OF JUDGMENT OF SUPREME COURT OF OHIO, DENIED BY SUPREME COURT OF UNITED STATES]

(Filed June 26, 1978)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

June 26, 1978

Thomas V. Koykka, Esquire
Arter & Hadden
1144 Union Commerce Bldg.
Cleveland, Ohio 44115

Re: *Board of Education, Bratenahl Local School District* v. *State Board of Education of Ohio, et al., A-1066*

Dear Mr. Koykka:

The Court today entered the following order in the above-entitled case:

"The application for stay of the judgment of the Supreme Court of Ohio, presented to Mr. Justice Stevens and by him referred to the Court, is denied."

Very truly yours,

MICHAEL RODAK, JR., Clerk
by
Francis J. Lorson
Deputy Clerk

cc: John D. Holschuh, Esquire
Alexander, Ebinger, Holschuh, Fisher & McAlister
17 South High Street
Columbus, Ohio 43215

APPENDIX C

[COMPLAINT IN PROHIBITION AND MANDAMUS,
CASE NO. 78AP-414,
IN COURT OF APPEALS OF
FRANKLIN COUNTY, OHIO]

(Filed June 28, 1978)

IN THE COURT OF APPEALS,
FRANKLIN COUNTY, OHIO

CASE NO. 78AP-414

STATE OF OHIO, ex rel., BOARD OF EDUCATION,
BRATENAHL LOCAL SCHOOL DISTRICT,
Relator,

vs.

STATE BOARD OF EDUCATION OF OHIO and
DEPARTMENT OF EDUCATION OF OHIO and
FRANKLIN B. WALTER, SECRETARY,
STATE BOARD OF EDUCATION OF OHIO and
SUPERINTENDENT OF PUBLIC INSTRUCTION,
Respondents.

COMPLAINT IN PROHIBITION AND MANDAMUS

Relator, Board of Education, Bratenahl Local School District, being a duly constituted school district in the

State of Ohio and "a body politic and corporate and as such, capable of suing and being sued," pursuant to R.C. 3313.17, for its Complaint in Prohibition and Mandamus states:

1. Respondent, State Board of Education of Ohio, is authorized and required under R.C. 3301.16 to "charter school districts and individual schools within each [school] district."

2. Respondent, Department of Education of Ohio, is, under R.C. 3301.13, the administrative unit through which legislative mandates are carried out and policies of the State Board of Education and the duties of the Superintendent of Public Instruction are administered, including, but not limited, to the development and administration of prerequisite steps and procedures to be followed by schools which desire to achieve ultimate evaluation/accreditation upon demonstration of compliance with applicable State standards.

3. Respondent, Franklin B. Walter, is the State Superintendent of Public Instruction, and Secretary of the State Board of Education of Ohio, pursuant to R.C. 3301.09.

4. On October 14, 1974, the State Board of Education of Ohio adopted a RESOLUTION AND ORDER ON BRATENAHL LOCAL SCHOOL DISTRICT, copy attached as Exhibit 1, wherein the State Board ordered the dissolution of the Bratenahl Local School District pursuant to the then applicable provisions of R.C. 3311.29, copy attached as Exhibit 2, which statute then required the dissolution of any school district which, after July 1, 1968, did not maintain 12 grades.

5. The Bratenahl District did not maintain 12 grades within its district prior to September, 1971, but has maintained 12 grades within its dictrict since that date, with its grades 9 through 12 being housed, since September, 1975, in a new, specially designed, centrally located high school building.

6. Effective September 30, 1975, the legislature amended R.C. 3311.29 by deleting therefrom any reference to any date after which all Ohio school districts must maintain 12 grades. See Exhibit 3 attached for the full text of R.C. 3311.29, as amended September 30, 1975.

7. The Ohio General Assembly, having deleted from R.C. 3311.29 any reference to a date, after which all Ohio school districts must maintain 12 grades, and the Bratenahl District having maintained 12 grades continuously from September, 1971 to date; the Bratenahl District is in full compliance with all provisions of R.C. 3311.29, as amended. Therefore, the State Board is without jurisdiction to dissolve the Bratenahl District now, in 1978, based upon a prior time requirement which was removed by the legislature in its 1975 amendments to R.C. 3311.29.

8. Unless the State Board of Education is prohibited from doing so by a Writ of Prohibition, issued by this Court, the State Board will summarily dissolve the Bratenahl District by enforcing the October, 1974 State Board dissolution order, as of July 8, 1978, when the existing stay of the March, 1978 judgment of the Supreme Court is due to expire, thereby depriving the Bratenahl District of its very life and stripping away its properties without the

due process of law which is promised under the Fourteenth Amendment to the U.S. Constitution and under Sections 1 and 19 of Article I of the Ohio Constitution, for which denial, the Bratenahl District has no plain and adequate remedy at law, or otherwise.

9. Under the date December 11, 1975, after the September, 1975 amendment of R.C. 3311.29, the Bratenahl District submitted to Respondents, the State Board, the Department of Education and the Superintendent of Public Instruction, its request that the Bratenahl high school be evaluated for accreditation purposes, looking toward the ultimate issuance of a charter for the Bratenahl high school. Respondents at all times, have failed and refused to take meaningful action upon that request, despite Respondents' statutorily mandated duty to do so under R.C. 3301.12A, 3301.13 and 3301.16. (See Exhibits 4, 5 and 6 for full text of these statutorily mandated duties).

10. Unless this Court shall require Respondents, by a Writ of Mandamus, to act upon the Bratenahl District's pending request seeking participation in standard evaluation/accreditation procedures for its high school, that high school, established in September, 1971, along with its elementary grades, established in the mid 1890's will be stripped away from the Bratenahl District without its high school ever having been evaluated for the issuance to it of a high school charter, even though R.C. 3301.16 mandatorily requires that the State Board *shall* issue charters for individual schools, thereby also denying to the Bratenahl District the due process of law which is promised under the Fourteenth Amend-

ment to the U.S. Constitution and under Sections 1 and 19 of Article I of the Ohio Constitution, for which denial the Bratenahl District has no plain and adequate remedy at law, or otherwise.

WHEREFORE, Relator, Board of Education, Bratenahl Local School District prays that Writs of Prohibition and Mandamus be issued directed to Respondents, the State Board of Education, the Department of Education of Ohio and the Superintendent of Public Instruction, (1) to prohibit the dissolution of the Bratenahl District under the October, 1974 State Board dissolution order and (2) to take meaningful action on the pending request of the Bratenahl District whereunder Bratenahl is seeking to have its high school participate in standard State evaluation/accreditation procedures, or in the event such writs be not issued, that alternative Writs of Prohibition and Mandamus be issued (1) prohibiting Respondents from taking action to dissolve the Bratenahl District under the October, 1974 State Board dissolution order and (2) requiring Respondents to take action, upon the pending request of the Bratenahl District for evaluation/accreditation of its high school; or be compelled to show valid cause, at an expedited hearing of this matter, on or before July 8, 1978, why Respondents should not be ordered and compelled to do so. In addition, the Bratenahl District prays for such other and further relief as may be equitable and proper according to law, including their costs and attorneys' fees.

/s/ WILLIAM S. BURTON

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Attorneys for Relator,
Board of Education, Bratenahl
Local School District

APPENDIX D

[NOTICE OF APPEAL IN CASE NO. 78AP-414 TO SUPREME COURT OF OHIO]

(Filed June 30, 1978)

IN THE COURT OF APPEALS,
FRANKLIN COUNTY, OHIO
TENTH APPELLATE DISTRICT

CASE NO. 78AP-414

STATE OF OHIO, ex rel., BOARD OF EDUCATION, BRATENAHL LOCAL SCHOOL DISTRICT,

Relator,

vs.

STATE BOARD OF EDUCATION OF OHIO and DEPARTMENT OF EDUCATION OF OHIO and FRANKLIN B. WALTER, SECRETARY, STATE BOARD OF EDUCATION OF OHIO and SUPERINTENDENT OF PUBLIC INSTRUCTION,

Respondents.

NOTICE OF APPEAL

Notice is hereby given that the Board of Education, Bratenahl Local School District hereby appeals to the

Supreme Court of Ohio from the judgment entry entered herein June 29, 1978, in the Court of Appeals of Franklin County, Ohio, Tenth Appellate District.

This appeal involves a Complaint in Prohibition and Mandamus which originated in the Court of Appeals, and is an appeal as a matter of right pursuant to Article IV, Section 2 (B) (2) (a) (i) of the Constitution of Ohio.

/s/ THOMAS V. KOYKKA

/s/ WILLIAM S. BURTON

ARTER & HADDEN
1144 Union Commerce Building
Cleveland, Ohio 44115

/s/ JOHN J. CHESTER
CHESTER, SAXBE, HOFFMAN & WILLCOX
Eight East Broad Street
Columbus, Ohio 43215

APPENDIX E

[CLASS ACTION COMPLAINT, CASE NO. 78-987399,
IN COURT OF COMMON PLEAS OF
CUYAHOGA COUNTY, OHIO]

(Filed August 2, 1978)

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CASE NO. 78-987399

SIDNEY STROMBERG,
324 Corning Drive, Bratenahl, Ohio 44108,
on behalf of himself and all others similarly situated,
Plaintiff,

vs.

BOARD OF EDUCATION,
VILLAGE OF BRATENAHL, OHIO,
11404 Lake Shore Boulevard, Bratenahl, Ohio 44108,

and

BOARD OF EDUCATION,
CITY OF CLEVELAND, OHIO,
1380 East 6th Street, Cleveland, Ohio 44114,

and

DEPARTMENT OF EDUCATION, STATE OF OHIO,
65 South Front Street, Columbus, Ohio 43215,

and

WILLIAM J. BROWN, ATTORNEY GENERAL,
STATE OF OHIO,
17th Floor, 30 East Broad Street, Columbus, Ohio 43215,
Defendants.

COMPLAINT

1. Plaintiff is a taxpayer, resident and elector of the Village of Bratenahl, County of Cuyahoga and State of Ohio.

2. Plaintiff brings this class action on behalf of himself and all others similarly situated as residents, taxpayers and electors of the Village of Bratenahl, County of Cuyahoga and State of Ohio.

3. The approximate number of members of this class exceeds 1,000 and is so numerous that joinder of all members is impractical.

4. The questions of law and fact relative to this controversy are common to all members of the class; that Plaintiff's claim is typical to the claim of the class; that Plaintiff will fairly and equitably project the interest of the class.

5. Adjudication as to this Plaintiff would be dispositive of the interest of the other members of this class not parties to this action and the questions of law and fact common to the members of this class predominate any questions affecting individual members and that this class action is the only means available for the fair and efficient adjudication of this controversy.

6. Plaintiff states that the Defendant, the Ohio State Department of Education, under the authority of Section

3311.29 R.C., has issued an order merging the Bratenahl School District with the Cleveland School District; that Section 3311.29 R.C. includes a mandatory directive transferring funds and property of the merging school district to the new school district; that by reason thereof, the transfer contained in Section 3311.29 R.C. conveys funds and property of the Bratenahl School District to the Defendant, Cleveland School Board, in excess of $1,000,000.00; that Plaintiff and all members of this class, as taxpayers, have an equitable interest in said property and funds, and that said property and funds are held in trust for them by the Defendant, Bratenahl Board of Education.

7. Plaintiff states that Section 3311.29 R.C., providing for the mandatory transfer of property and funds by administrative order of merger from one school district to another is constitutionally repugnant and in violation of the due process clause of the Constitutions of the United States and the State of Ohio.

8. The transfer and conveyance of said funds and property to the Defendant, Cleveland Board of Education, by reason of said order of merger issued by the Defendant, Ohio State Department of Education, will cause Plaintiff and all members of the class to suffer irreparable damage.

WHEREOF, Plaintiff demands that the Court adjudge:

1. That Section 3311.29 R.C., authorizing the merger of school districts and including the mandatory transfer and conveyance of funds and property by administrative order from one district to another is unconstitutional.

2. That the order and/or orders pending and issued by the Ohio Department of Education under authority of Section 3311.29 R.C. are invalid.

3. That the Defendant, Ohio Department of Education,

as well as the Defendant, Cleveland Board of Education and Bratenahl Board of Education, be temporarily restrained and enjoined from enforcing and/or instituting said order of merger, and that said injunctive relief be made permanent upon the final hearing of this cause.

4. That the Court make a determination of the fair and reasonable value of the services rendered by Plaintiff's attorney and that he be granted an order allowing payment of said attorney's fees, together with his costs.

/s/ JAMES A. CHIARA
1914 Superior Building
Cleveland, Ohio 44114
(216) 861-3432

JOHN J. SHEEHAN
1550 Hanna Building
CLEVELAND, OHIO 44115
(216) 696-8860

Attorneys for the Plaintiff